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10/601,716

06/23/2003

Christopher Donald Philipp

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04/14/2005

MCCRACKEN & FRANK LLP

200 W. ADAMS STREET

SUITE 2150

CHICAGO, IL 60606

EXAMINER

HUSAR, STEPHEN F

ART UNIT

PAPER NUMBER

2875

DATE MAILED: 04/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/601,716

Applicant(s)

PHILIPP, CHRISTOPHER  
DONALD

Examiner

Stephen F. Husar

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 and 24-45 is/are rejected.
- 7) ☒ Claim(s) 23 and 46 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/26/03</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4,10-16,20-22,24-27,33-39, and 43-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Jaffe et al. (3715636). Jaffe et al. shows in Fig.2 ; a hollow truncated spherical housing “24” made of glass or plastic with a light emitting diode “18” positioned at the center point of a sphere defined by the spherical curvature of the housing “24”. Jaffe et al. shows in Fig.3 a gold coated reflective surface “32”.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 5-9, 17-19, 28-32, and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jaffe et al. (3715636). Claims 5-9 and 28-32 distinguish over Jaffe et al. only in that specific thicknesses and diameters are set forth for the housing. It is well known to change the size and dimensions of a device where the device does not perform differently than the prior art (see MPEP 2144.04; In *Gardner v. TEC Systems, Inc.* 725 F.2d 1338 220 USPQ 777, Fed Cir. 1984). It would have been obvious to one of ordinary skill in the art at the time of the invention to change the size and dimensions of Jaffe et al.'s housing since the use of certain sizes and dimensions enable one to reduce manufacturing costs of the device. Claims 17-19 and 40-42 distinguish over Jaffe et al. only in the type of light source used. It is well known in the art to change the type of light source used in a device to change the size or shape of the light emitted where the device does not perform differently than the prior art with the same change (see MPEP 2144.04; In *Gardner v. TEC Systems, Inc.* 725 F.2d 1338 220 USPQ 777, Fed Cir. 1984). It would have been obvious to one of ordinary skill in the art at the time of the invention to change the type of light source used in Jaffe et al.'s housing since the use of various types of light sources change the type of light emitted and enable one to provide the desired lighting in a more economical manner.

***Allowable Subject Matter***

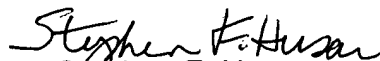
6. Claims 23 and 46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 2875

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen F. Husar whose telephone number is 571-272-2371. The examiner can normally be reached on M-W and F from 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Stephen F. Husar  
Primary Examiner  
Art Unit 2875

SFH